

AMENDED IN ASSEMBLY JUNE 6, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 21, 2005

**SENATE BILL**

**No. 440**

**Introduced by Senator Speier**

February 17, 2005

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An act to add *Section 1798.21.5 to, and to add Title 1.81.23* (commencing with Section 1798.90.5) to Part 4 of Division 3 of, the Civil Code, relating to personal information ~~disclosures~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier. Personal information ~~disclosures~~; ~~businesses~~.

*(1) The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, as specified.*

*This bill would require a state agency, or any person contracting with a state agency, to encrypt all personal information that is stored or transported on a portable computer using industry standard encryption procedures.*

*(2) Existing law prescribes various prohibitions with regard to disclosures of personal information related to, among others, consumer credit reports, credit card transactions, driver's licenses, social security numbers, and direct marketing.*

*This bill would prohibit a business, as defined, from discriminating against or denying an otherwise qualified consumer a product or service because the consumer has not provided the consent to disclose or share personal information pertaining to him or her, or because the consumer has directed that the information not be disclosed or shared,*

pursuant to state or federal law. The bill would except from that prohibition a business that cannot provide a product or service without provision of that personal information and certain financial institutions already subject to similar provisions. The bill would provide that no liability is created with regard to the above, and that the measure is not intended to prohibit a business from offering incentives or discounts to elicit a specific response pertaining to the disclosure or sharing of personal information.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1798.21.5 is added to the Civil Code, to*  
2     *read:*

3     *1798.21.5. An agency, or any person contracting with an*  
4     *agency, shall encrypt all personal information that is stored or*  
5     *transported on a portable computer using industry standard*  
6     *encryption procedures.*

7     ~~SECTION 1.—~~

8     *SEC. 2. Title 1.81.23 (commencing with Section 1798.90.5)*  
9     *is added to Part 4 of Division 3 of the Civil Code, to read:*

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11             TITLE 1.81.23. PERSONAL INFORMATION  
12             DISCLOSURES TO BUSINESSES

13

14     1798.90.5. (a) A business shall not discriminate against or  
15     deny an otherwise qualified consumer a product or service  
16     because the consumer has not provided the business the consent  
17     to disclose or share personal information pertaining to him or her,  
18     or because the consumer has directed that the information not be  
19     disclosed or shared, pursuant to state or federal law.

20     (b) Notwithstanding any other provision of law, nothing in this  
21     section shall prohibit a business from denying a consumer a  
22     product or service if the business could not provide the product  
23     or service to the consumer without disclosure of the consumer's  
24     personal information, and the consumer has failed to provide  
25     consent to that disclosure or has directed that personal  
26     information pertaining to him or her not be disclosed or shared,  
27     pursuant to state or federal law.

1 (c) A business shall not be liable for failing to offer products  
2 or services to a consumer solely because that consumer, pursuant  
3 to state or federal law, has failed to provide the business the  
4 consent to disclose or share personal information pertaining to  
5 him or her or has directed that personal information not be  
6 disclosed or shared, and the business could not offer the product  
7 or service without the disclosure of the consumer's personal  
8 information.

9 (d) Nothing in this section is intended to prohibit a business  
10 from offering incentives or discounts to elicit a specific response  
11 to a choice pertaining to the disclosure or sharing of personal  
12 information granted in state or federal law.

13 (e) The requirements of this section shall not apply where a  
14 business is subject to, and in compliance with, paragraph (1) of  
15 subdivision (a) and paragraph (4) of subdivision (b) of Section  
16 4053 of the Financial Code.

17 (f) For purposes of this section:

18 (1) "Business" means a proprietorship, partnership,  
19 corporation, or any other form of commercial enterprise, doing  
20 business in California.

21 (2) "Personal information" has the same meaning as described  
22 in Section 1798.80.